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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/591,869

06/27/2007

Michel Bachmann

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ALLERGAN, INC.
2525 DUPONT DRIVE, T2-7H
IRVINE, CA 92612-1599

EXAMINER

DANG, PHONG SON H

ART UNIT

PAPER NUMBER

3773

MAIL DATE

DELIVERY MODE

03/16/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/591,869	Applicant(s) BACHMANN ET AL.	
	Examiner SON DANG	Art Unit 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-10,12-15 and 18-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5,6,10,12-15 and 18-21 is/are allowed.
- 6) ☒ Claim(s) 1,2 and 7-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/18/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amendment filed 01/28/2010 has been entered. Claims 3-4, 11 and 16-17 have been cancelled. Claims 1-2, 5-10, 12-15 and 18-21 are pending in the application. The previous 35 USC 112 rejection of claim 9 has been withdrawn in light of the applicant's amendment to claim 9.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2, 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,658,298 to Vincent et al. (Vincent).

In regards to claims 1-2, 7 and 9:

Vincent teaches:

A surgically implantable adjustable ring for constricting a tubular organ, the adjustable ring (10, Fig. 2) comprising: an open ring body having closure system including a first (where 14 is, Fig. 2) and a second end parts (11, Fig. 2), the open ring body being designed to be closed around the tubular organ; the closure system constricting the tubular organ by closing the ring and forming the ring into a loop; and the first end part including a first reinforcement flange (the portion between the sleeve 14 and the aperture 16, Fig. 1) and a sleeve (14, Fig.

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1) having a first and a second portions (front and back of sleeve, Fig. 2) and defining a first aperture (15, Fig. 1) and a second aperture (16, Fig. 1) disposed substantially parallel to the first aperture (15, Fig. 1), the sleeve (14, Fig. 2) being designed to receive the second end part (11, Fig. 2), the sleeve (14, Fig. 2) being disposed in a substantially perpendicular direction in relation to the direction of the first end part (where 14 is, Fig. 2), the second part (11, Fig. 2) comprising a locking protrusion (12, Fig. 2) adapted to engage and fill the first aperture (15, Fig. 1) in the sleeve (14, Fig. 2), thereby securing the ring (10, Fig. 2) in a closed position; wherein the second aperture (16, Fig. 2) remains substantially unfilled when the ring (10, Fig. 2) is in a closed position. The second portion of the sleeve defines the second aperture (15, Fig. 2), and wherein the second portion of the sleeve partially overlaps the second part (11, Fig. 2) when the ring (10, Fig. 2) is in the closed position. Wherein the first reinforcement flange (the portion between the sleeve 14 and the aperture 16, Fig. 1) is disposed transversally to the external perimeter of the ring. The ring (10, Fig. 2) is made of biocompatible elastomeric material.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vincent in view of US Patent No. 4,442,153 to Meltsch (Meltsch).

In regards to claim 8:

Vincent teaches:

The closure system according to claim 1 (see rejections of claim 1 above).

Vincent fails to teach:

A second reinforcement flange adjacent the aperture.

Meltsch teaches:

A second reinforcement flange (Col. 2, lines 4-18) adjacent the aperture.

It would have been obvious to one of ordinary skill in the art at the time of the invention to employ reinforcement structures at the sleeve in order to reinforce the sleeve in the event of breakage.

Allowable Subject Matter

6. Claims 5-6, 10, 12-15 and 18-21 are allowed.

Response to Arguments

7. Applicant's arguments with respect to claims 1-2 and 7-9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SON DANG whose telephone number is (571)270-5809. The examiner can normally be reached on Monday-Friday 7:30 AM - 5:00 PM EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SD/

/Gary Jackson/
Supervisory Patent Trainer
TC 3700
March 14, 2010